

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	
Universal Service)	CC Docket No. 96-45
)	
IT&E Overseas, Inc.)	
)	
Petition for Designation as an)	
Eligible Telecommunications Carrier)	
in the Territory of Guam)	

MEMORANDUM OPINION AND ORDER

Adopted: June 5, 2002

Released: June 6, 2002

By the Deputy Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, we grant the petition of IT&E Overseas, Inc. (IT&E) to be designated as an eligible telecommunications carrier (ETC) in the territory of Guam, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).¹ IT&E has provided an affirmative statement that the Public Utilities Commission of Guam (Guam Commission) lacks the jurisdiction to perform the designation over IT&E. We therefore conclude that the Commission has authority to perform the requested ETC designation under section 214(e)(6) of the Act.² We also find that IT&E has satisfied the statutory eligibility requirements of section 214(e)(1).³ Specifically, we conclude that IT&E has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. In addition, we find that the designation of IT&E as an ETC in the area served by Guam Telephone Authority, which is the rural incumbent local exchange carrier (LEC) in Guam,⁴ serves the public interest by promoting competition and

¹ IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam, filed December 6, 2001 (IT&E Petition). See 47 U.S.C. § 214(e)(6). The Commission has jurisdiction over interstate and foreign common carrier communications that originate or terminate in the United States. See 47 U.S.C. §§ 151 and 152. Guam, as a United States territory, is subject to the jurisdiction of the Commission. See 47 U.S.C. § 153(51) (defining “United States” to include “the several States and Territories.”). See also *IT&E Overseas, Inc. and PCI Communications, Inc. Petition for Emergency Relief and Expedited Declaratory Ruling*, Memorandum Opinion and Order, 7 FCC Rcd 4023 (1992) (holding that the Commission has exclusive jurisdiction over interstate and foreign common carrier communications that originate or terminate in the territory of Guam).

² 47 U.S.C. § 214(e)(6).

³ 47 U.S.C. § 214(e)(1).

⁴ See IT&E Petition at 6 n.13.

the provision of new technologies to consumers in Guam.

II. BACKGROUND

2. *The Act.* Section 254(e) of the Act provides that “only an eligible telecommunications carrier designated under section 214(e) shall be eligible to receive specific Federal universal service support.”⁵ Pursuant to section 214(e)(1), a common carrier designated as an ETC must offer and advertise the services supported by the federal universal service mechanisms throughout the designated service area.⁶

3. Section 214(e)(2) of the Act gives state commissions the primary responsibility for performing ETC designations.⁷ Section 214(e)(6), however, directs the Commission, upon request, to designate as an ETC “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”⁸ Under section 214(e)(6), upon request and consistent with the public interest, convenience, and necessity, the Commission may, with respect to an area served by a rural telephone company, and shall, in all other cases, designate more than one common carrier as an ETC for a designated service area, so long as the requesting carrier meets the requirements of section 214(e)(1).⁹ Before designating

⁵ 47 U.S.C. § 254(e).

⁶ Section 214(e)(1) provides that:

A common carrier designated as an eligible telecommunications carrier under [subsections 214(e)(2), (3), or (6)] shall be eligible to receive universal service support in accordance with section 254 and shall, throughout the service area for which the designation is received --

- (A) offer the services that are supported by Federal universal service support mechanisms under section 254(c), either using its own facilities or a combination of its own facilities and resale of another carrier’s services (including the services offered by another eligible telecommunications carrier); and
- (B) advertise the availability of such services and the charges therefor using media of general distribution.

47 U.S.C. § 214(e)(1).

⁷ 47 U.S.C. § 214(e)(2). *See also Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, 15 FCC Rcd 12208, 12255, para. 93 (2000) (*Twelfth Report and Order*).

⁸ 47 U.S.C. § 214(e)(6). *See Designation of Fort Mojave Telecommunications, Inc., Gila River Telecommunications, Inc., San Carlos Telecommunications, Inc., and Tohono O’odham Utility Authority as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45 Memorandum Opinion and Order, 13 FCC Rcd 4547 (Com. Car. Bur. 1998); *Petition of Saddleback Communications for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(6) of the Communications Act*, CC Docket No. 96-45, Memorandum Opinion and Order, 13 FCC Rcd 22433 (Com. Car. Bur. 1998); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48 (Com. Car. Bur. 2000); *Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier for the Pine Ridge Reservation in South Dakota*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 18133 (2001); *Guam Cellular and Paging, Inc. d/b/a Guamcell Communications Petition for Designation as an Eligible Telecommunications Carrier In the Territory of Guam*, CC Docket No. 96-45, Memorandum Opinion and Order, 17 FCC Rcd 1502 (Com. Car. Bur. 2002).

⁹ 47 U.S.C. § 214(e)(6).

an additional ETC for an area served by a rural telephone company, the Commission must determine that the designation is in the public interest.¹⁰

4. *Filing Requirements for ETC Designation.* On December 29, 1997, the Commission released a Public Notice establishing the requisite procedures for carriers seeking Commission designation as an ETC under section 214(e)(6).¹¹ In the *Section 214(e)(6) Public Notice*, the Commission delegated authority to the Chief of the Common Carrier (now Wireline Competition) Bureau to designate carriers as ETCs pursuant to section 214(e)(6).¹² The Commission instructed carriers seeking ETC designation to set forth in a petition several items in compliance with the Act. First, petitioners must submit a certification and brief statement of supporting facts demonstrating that the petitioner is “not subject to the jurisdiction of a state commission.”¹³ Second, petitioners must submit a certification that the petitioner offers all services designated for support by the Commission pursuant to section 254(c).¹⁴ Third, petitioners must provide a certification that the petitioner offers the supported services “either using its own facilities or a combination of its own facilities and resale of another carrier’s services.”¹⁵ Fourth, petitioners must offer a description of how the petitioner “advertise[s] the availability of [supported] services and the charges therefor using media of general distribution.”¹⁶ If the petitioner is not a rural telephone company, the petitioner must include a detailed description of the geographic service area for which it requests a ETC designation from the Commission.¹⁷

5. Pursuant to the *Twelfth Report and Order*, carriers seeking designation as an eligible telecommunications carrier for service provided on non-tribal lands must first consult with the appropriate state regulatory commission, even if the carrier contends that the state commission lacks jurisdiction over the carrier.¹⁸ While a carrier may assert that state law precludes the state commission from exercising jurisdiction over the carrier for purposes of ETC designation under section 214(e)(2), the principle of federal-state comity dictates that the state commission be afforded an opportunity to interpret state law.¹⁹ Accordingly, the Commission will only consider section 214(e)(6) designation requests from carriers serving non-tribal lands where a carrier provides the Commission with an “affirmative statement” from a court of competent jurisdiction or the state commission that it lacks jurisdiction to perform the ETC designations over a particular carrier.²⁰ An “affirmative statement” from a state commission may

¹⁰ *Id.*

¹¹ *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Rcd 22947 (1997) (*Section 214(e)(6) Public Notice*). *Id.*

¹² *Id.* at 22948.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 22949.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Twelfth Report and Order*, 15 FCC Rcd at 12255, para. 93.

¹⁹ *Id.* at 12264, para. 113.

²⁰ *Id.*

consist of any duly authorized letter, comment, or state commission order indicating that the body lacks jurisdiction to perform the requested designation for a particular carrier.²¹

6. IT&E Petition. IT&E consulted with the Guam Commission regarding its jurisdiction to designate IT&E as an eligible telecommunications carrier for the territory of Guam.²² In response to IT&E's inquiry, the Guam Commission released a letter on December 4, 2001, indicating that the Guam Commission "lacks jurisdiction to designate IT&E as an eligible telecommunications carrier," and "IT&E must seek designation as an [ETC] from the FCC."²³

7. On December 6, 2001, IT&E filed with this Commission a petition pursuant to section 214(e)(6) seeking designation of eligibility to receive federal universal service support for service offered in Guam.²⁴ On December 11, 2001, the Common Carrier (now Wireline Competition) Bureau released a Public Notice seeking comment on the IT&E Petition.²⁵ No comments were submitted in response to the Public Notice.

III. DISCUSSION

8. We find, as discussed in more detail below, that IT&E has met all the requirements set forth in sections 214(e)(1) and (e)(6) to be designated as an ETC by this Commission for the provision of service throughout the territory of Guam. We conclude that IT&E has demonstrated that the Guam Commission lacks the jurisdiction to perform the designation, and that the Commission therefore may consider IT&E's petition under section 214(e)(6). We also conclude that IT&E has demonstrated that it now offers and advertises, or will offer and advertise, the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC. Furthermore, we find that the designation of IT&E as an ETC in the area served by the rural telephone company in Guam serves the public interest by promoting competition and the provision of new technologies to consumers in the area and universal service to those consumers. Pursuant to our authority under section 214(e)(6), we therefore designate IT&E as an eligible telecommunications carrier for the territory of Guam.

9. Commission Authority to Perform the ETC Designation. We find that IT&E has demonstrated that the Guam Commission lacks the jurisdiction to perform the requested ETC designation, and that the Commission, therefore, has authority to consider IT&E's petition under section 214(e)(6) of the Act. We deem the Guam Commission Letter to constitute the affirmative statement required under our rules.²⁶

²¹ *Id.*

²² IT&E Petition at 4-5 and Attachment 2 (Letter from the Public Utilities Commission of Guam to Counsel for IT&E Overseas, Inc., dated December 4, 2001 (Guam Commission Letter)).

²³ See Guam Commission Letter.

²⁴ See generally IT&E Petition.

²⁵ See *Common Carrier Bureau Seeks Comment on IT&E Overseas, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Territory of Guam*, CC Docket No. 96-45, Public Notice, 16 FCC Rcd 21928 (rel. Dec. 11, 2001). See also 66 Fed. Reg. 65502 (December 19, 2001). To ensure that the state commission was notified of this proceeding, a copy of the Public Notice was delivered by certified mail to the Guam Commission.

²⁶ See Guam Commission Letter; *Twelfth Report and Order* at 12264.

10. Offering the Services Designated for Support. We find that IT&E has demonstrated through the required certifications that it now offers, or will offer, the services supported by the federal universal service mechanisms upon its designation as an ETC. IT&E is licensed to provide wireless telephone service throughout Guam.²⁷ IT&E certifies that it offers, or will offer upon designation as an ETC, all of the services and functionalities enumerated in section 54.101(a) of the Commission's rules "to 100 percent of the population of Guam."²⁸ IT&E certifies that it has the capability to offer voice-grade access to the public network, the functional equivalents to DTMF signaling and single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers.²⁹ IT&E complies with applicable law and Commission directives on providing access to emergency services.³⁰ In addition, although the Commission has not set a minimum local usage requirement, IT&E includes local usage in all of its calling plans.³¹ Finally, IT&E commits to provide the supported services upon request throughout the territory of Guam.³² We conclude, therefore, that IT&E complies with the requirement of section 214(e)(1)(A) to "offer the services that are supported by Federal universal service support mechanisms under section 254(c). . . ."³³

11. Offering the Supported Services Using a Carrier's Own Facilities. We conclude that IT&E has demonstrated that it satisfies the requirement of section 214(e)(1)(A) that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services.³⁴ IT&E states that it "will offer supported services upon request throughout Guam over its own facilities."³⁵ IT&E also indicates that it may provide supported services using a combination of its own facilities and resale of another carrier's

²⁷ IT&E Petition at 1. IT&E is licensed to provide personal communications service (PCS) on frequency blocks C and D in the Guam Rural Service Area. *Id.* at 1 n.1.

²⁸ *Id.* at 2. Pursuant to section 254(c), the Commission has defined those services that are to be supported by the federal universal service mechanisms to include: (1) voice grade access to the public switched network; (2) local usage; (3) Dual Tone Multifrequency (DTMF) signaling or its functional equivalent; (4) single-party service or its functional equivalent; (5) access to emergency services, including 911 and enhanced 911; (6) access to operator services; (7) access to interexchange services; (8) access to directory assistance; and (9) toll limitation for qualifying low-income customers. 47 C.F.R. § 54.101(a). In addition, IT&E indicates that "[i]n accordance with Section 54.401(b) of the Commission's rules, IT&E will not disconnect Lifeline service for non-payment of toll charges." See IT&E Petition at 4. We note that, pursuant to the Fifth Circuit Court of Appeals decision in *Texas Office of Public Utility Counsel v. FCC*, section 54.401(b) of the rules was deleted in November 1999. See *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999); *Federal-State Board on Universal Service Access Charge Report*, Sixteenth Order on Reconsideration, CC Docket No. 96-45, Eighth Report and Order, CC Docket No. 96-45, Sixth Report and Order, CC Docket No. 96-262, 15 FCC Rcd 1679 (2000).

²⁹ IT&E Petition at 2-4.

³⁰ See 47 C.F.R. § 54.101(a)(5) (stating that access to emergency services includes access to 911 and enhanced 911 to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems). IT&E currently provides all of its customers with access to the 911 system. See IT&E Petition at 3.

³¹ IT&E Petition at 3.

³² IT&E Petition at 2.

³³ 47 U.S.C. § 214(e)(1)(A).

³⁴ *Id.*

³⁵ IT&E Petition at 2.

services.³⁶ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(A).

12. *Advertising the Supported Services.* We conclude that IT&E has demonstrated that it satisfies the requirement of section 214(e)(1)(B) to advertise the availability of the supported services and the charges therefor using media of general distribution.³⁷ IT&E certifies that it will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution.³⁸ IT&E has also indicated that it “currently advertises the availability of its services, and will do so for each supported service on a regular basis, in newspapers, and magazines, or on radio and television, that constitute media of general distribution in Guam.”³⁹ We find this certification sufficient to satisfy the requirements of section 214(e)(1)(B). Moreover, because ETCs receive universal service support only to the extent that they serve customers, we believe that strong economic incentives exist, in addition to the statutory obligation, to advertise the universal service offering in Guam.

13. *Public Interest Analysis.* We conclude that it is “consistent with the public interest, convenience, and necessity” to designate IT&E as an ETC in the designated service area that is served by Guam Telephone Authority, the incumbent rural telephone company in Guam.⁴⁰ At the outset, we note that no parties filed oppositions to the IT&E Petition. Hence, no one has challenged the showing that consumers will benefit from IT&E’s provision of competitive service and new technologies in Guam.

14. We note that an important goal of the Act is to open local telecommunications markets to competition.⁴¹ We conclude that IT&E has demonstrated that its service offering fulfills several of the underlying federal policies favoring competition. We find that consumers in Guam will benefit from the designation of IT&E as an ETC and its provision of competitive telecommunications service. The designation of IT&E as an ETC will also provide an incentive to the incumbent rural telephone company to improve its existing network to remain competitive, resulting in improved service to Guam consumers.⁴² We also find that the provision of competitive service will facilitate universal service to the benefit of consumers in Guam by creating incentives to ensure that quality services are available at “just, reasonable, and affordable rates.”⁴³

15. Although we recognize the substantial benefits of competition to consumers, we

³⁶ *Id.*

³⁷ 47 U.S.C. § 214(e)(1)(B).

³⁸ IT&E Petition at 5.

³⁹ *Id.*

⁴⁰ *See* 47 U.S.C. § 214(e)(6).

⁴¹ According to the Joint Explanatory Statement, the purpose of the Act is “to provide for a pro-competitive, de-regulatory national policy framework designated to accelerate rapidly the private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition. . . .” Joint Explanatory Statement of the Committee of the Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 131.

⁴² IT&E Petition at 6.

⁴³ 47 U.S.C. § 254(b)(1).

acknowledge that Congress expressed a specific intent to preserve and advance universal service in rural areas as competition emerges.⁴⁴ Specifically, we believe that Congress sought to ensure that consumers in areas served by rural telephone companies continue to be adequately served should the incumbent telephone company seek to relinquish its ETC designation under section 214(e)(4).⁴⁵ We therefore consider additional factors in the public interest examination required by section 214(e)(6) prior to the designation of an additional ETC in an area served by a rural telephone company, such as whether consumers will be harmed.

16. Specifically, IT&E demonstrates both the commitment and ability to provide service to rural consumers. Nothing in the record before us indicates that IT&E may be unable to satisfy its statutory ETC obligations after designation. We note that IT&E has committed, upon designation as an ETC, to offer all of the supported services to 100 percent of Guam's population.⁴⁶ IT&E also indicates that it can provide the supported services using its own facilities.⁴⁷ By choosing to use its own facilities to provide service in Guam, IT&E can continue to offer service to any requesting customer even if the incumbent carrier subsequently withdraws from providing service.⁴⁸

17. Designated Service Areas. Consistent with IT&E's request, we designate IT&E as an ETC for the requested service areas in Guam.⁴⁹ This service area encompasses the entire study area of the incumbent rural carrier, Guam Telephone Authority, as indicated in Attachment 3 of the IT&E Petition.⁵⁰

IV. ANTI-DRUG ABUSE ACT CERTIFICATION

18. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including

⁴⁴ 47 U.S.C. § 214(e)(6) (stating that before designating an additional ETC for an area served by a rural telephone company, the Commission shall find that the designation is in the public interest). *See also* 47 U.S.C. § 254(b)(3).

⁴⁵ *See Western Wireless Corporation Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, 16 FCC Rcd 48, 56 at para. 18 (Com. Car. Bur. 2000) (citing Letter from Earl W. Comstock, Counsel for Nucentrix, to Magalie Roman Salas, Federal Communications Commission, dated October 25, 2000).

⁴⁶ IT&E Petition at 2 and 7.

⁴⁷ *See* IT&E Petition at 2.

⁴⁸ We note, however, that an ETC is not required to provide service solely using its own facilities. Section 214(e)(1)(A) allows a carrier designated as an ETC to offer the supported services "either using its own facilities or a combination of its own facilities and resale of another carrier's services." 47 U.S.C. § 214(e)(1)(A).

⁴⁹ *See* IT&E Petition at 7 and Attachment 3. IT&E requests designation as an ETC throughout the territory of Guam, Guam Rural Service Area, CMA 732. *Id.* at 7. Under section 214(e)(5) of the Act, "service area" connotes a geographic area established by a state commission, or the Commission under section 214(e)(6), for the purpose of determining universal service obligations and support mechanisms. 47 U.S.C. § 214(e)(5).

⁵⁰ *See* IT&E Petition at Attachment 3. A "study area" is an incumbent LEC's existing service area in a given state. *See Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8872 n.434 (1997). The "service area" of a common carrier seeking to be designated as an ETC in an area served by a rural telephone company must be the rural telephone company's study area, unless a different definition is established by the Commission and the states as provided under the Act. *See* 47 U.S.C. § 214(e)(5).

Commission benefits.⁵¹ This certification must also include the names of individuals specified by section 1.2002(b) of the Commission's rules.⁵² IT&E has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988.⁵³ We find that IT&E has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in sections 1.2001-1.2003 of the Commission's rules.⁵⁴

V. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. § 214(e)(6), and the authority delegated in sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, IT&E Overseas, Inc. IS DESIGNATED AN ELIGIBLE TELECOMMUNICATIONS CARRIER for the territory of Guam, as discussed herein.

20. IT IS FURTHER ORDERED that a copy of this Memorandum Opinion and Order SHALL BE transmitted by the Wireline Competition Bureau to the Universal Service Administrative Company.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau

⁵¹ 47 U.S.C. § 1.2002(a); 21 U.S.C. § 862.

⁵² Section 1.2002(b) provides that a certification pursuant to that section shall include: "(1) If the applicant is an individual, that individual; (2) If the applicant is a corporation or unincorporated association, all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting/and or non-voting) of the petitioner; and (3) If the applicant is a partnership, all non-limited partners and any limited partners holding a 5% or more interest in the partnership." 47 C.F.R. § 1.2002(b).

⁵³ See IT&E Petition at 7 and Attachment 1.

⁵⁴ 47 C.F.R. §§ 1.2001-1.2003.